

**WEST VIRGINIA
HUMAN RIGHTS COMMISSION**

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WEST VIRGINIA HUMAN RIGHTS COMMISSION



**YOUR GUIDE TO
FREQUENTLY ASKED QUESTIONS
IN
DISCRIMINATION**

WVHRC

Guide to Frequently Asked Questions:

40. Can I file a race discrimination complaint against my landlord if the landlord tries to evict me because my child is biracial?

Yes. It is illegal to discriminate against a tenant because of the race and/or color of a family member, friend, or associate.

34. What are some examples of public accommodations discrimination?

Some examples of possible public accommodations discrimination include:

- public restrooms that are not accessible for persons with disabilities
- refusing service to a patron who is of a particular race
- refusing to allow a person with a disability to be accompanied by a service animal in a medical setting enforcing a dress code that is designed to exclude persons of color from a night club
- withholding educational opportunities from a student because of her gender

35. Does the HRC investigate complaints related to physical accessibility for persons with disabilities?

Yes. If you have visited a place of public accommodations that is not accessible for persons with disabilities, the Commission can investigate to determine any accessibility issues that should be addressed.

36. Does the HRC investigate complaints against schools?

Yes. The HRC will investigate complaints of discrimination, including claims of racial and/or sexual harassment made against schools. Schools are considered places of public accommodations.

Housing

37. What types of housing discrimination are covered by the West Virginia Fair Housing Act?

Housing discrimination can include refusal to sell or rent housing, or the refusal of any services or benefits related to housing, or unlawful harassment. The West Virginia Fair Housing Act covers these types of housing discrimination when they are based on race, religion, color, national origin, ancestry, sex, blindness, disability, or familial status.

38. What is familial status?

"Familial status" refers to families which include or are expecting (through pregnancy or adoption) children. It is unlawful to discriminate in housing against families with children.

39. I'm going to be evicted very soon. Can the HRC stop the eviction?

The HRC is not authorized to get involved in an eviction proceeding, except where discrimination may be involved. The West Virginia Fair Housing Act empowers the HRC to ask a judge to temporarily prevent an eviction where there has been a complaint of discrimination, where the HRC has not yet had a opportunity to investigate the complaint, and where certain other requirements are met. Whether or not the eviction is actually prevented may depend upon the rulings of the judge.

The West Virginia Human Rights Act prohibits discrimination in employment and in places of public accommodations based on race, religion, color, national origin, ancestry, sex, age, (40 or above), blindness, or disability.

In addition, discrimination in housing because of race, religion, color, national origin, ancestry, sex, blindness, disability, or familial status is forbidden.

MISSION STATEMENT

The West Virginia Human Rights Commission will encourage and endeavor to bring about respect, tolerance, and mutual understanding among all citizens of West Virginia regardless of their race, gender, religious persuasion, ethnicity, or disability.

The West Virginia Human Rights Commission will administer and ensure adherence to, through education, investigation, mediation, and adjudication, the Human Rights Act which prohibits discrimination in employment, housing and places of public accommodation.

30. I live in West Virginia, but work in another state. Can I file an employment discrimination complaint with the HRC?

No. The HRC can only investigate complaints of discrimination which occur in West Virginia. If discrimination occurs in another state, you should file with that state's agency which investigates unlawful discrimination.

31. If I file a complaint with the HRC, is that the same as filing with the EEOC?

The HRC is a state agency which receives and investigates discrimination complaints, while the EEOC is a federal agency which does the same thing. The two agencies have a cooperative agreement with each other, so that employment cases filed with the West Virginia HRC are automatically filed with EEOC as well.

Public Accommodations

32. What are places of public accommodations?

The term "place of public accommodations" means any establishment or person which offers its services, goods, facilities, or accommodations to the general public. This includes "private" facilities and programs which are open to the public, and state and local governmental agencies and programs.

33. What are some examples of places of public accommodations?

Some examples include:

- stores
- restaurants
- schools
- movie theaters
- hotels
- court houses
- government offices
- sports stadiums
- medical offices
- night clubs
- public parks
- fair grounds
- buses
- public transportation
- museums
- recreational facilities

24. Who can I file against if I was working through a temporary employment agency at a job site for another company?

This may depend on several things, but in general you can make your complaint against both your employer and (if it is not your employer) the person or company who was directly responsible for the discrimination.

25. Can I file a complaint against my union?

Yes. Just as employers are prohibited from discriminating, it is unlawful for a union to discriminate.

26. Does the HRC investigate employers who don't pay wages on time?

Generally, no. The Human Rights Act only gives the HRC the power to address discrimination based on race, religion, color, ancestry, nation origin, sex, blindness, disability, or age. Unless your employer is withholding your pay for one of these reasons, withholding pay or paying late would not be a violation of the Human Rights Act. However, the West Virginia Division of Labor does investigate wage payment claims. You may contact the West Virginia Division of Labor at: (304) 558-7890; Web address: www.wvlabor.com.

27. Does the HRC investigate complaints of sexual harassment?

Yes. Sexual harassment, if it is unwanted, offensive, and severe or pervasive, is considered a form of sex discrimination, and is prohibited by the Human Rights Act.

28. Can I file a complaint with the HRC if I believe I was discriminated against because of pregnancy?

Yes. Discrimination based on pregnancy is considered a form of sex discrimination, which is prohibited by the Human Rights Act.

29. Does the Commission investigate whistle blower discrimination or worker's compensation discrimination?

Generally, no. While some employers may "discriminate" against workers for filing worker's compensation claims, or for reporting illegal activity, this type of discrimination is not covered under the West Virginia Human Rights Act. But this does not necessarily mean that you do not have a valid legal claim. It means that you must take your claim somewhere other than the Human Rights Commission. If you believe that you are the victim of a form of illegal discrimination which is not covered by the West Virginia Human Rights Act or the West Virginia Fair Housing Act, you should consult with a lawyer.

INTRODUCTION

This booklet is meant to be a guide for individuals who are considering filing or who have filed a complaint with the West Virginia Human Rights Commission. Inside are answers to common questions that individuals have asked about the Human Rights Commission and the complaint process. This booklet is not intended to provide any legal advice and should not be taken as such. you have any questions about the West Virginia Human Rights Commission, your human rights, or the complaint process, please do not hesitate to call, write, or fax, or walk in to the Human Rights Commission office and speak to a staff member.

Starting the Commission (HRC) Process

1. What kind of complaints does the HRC investigate?

The HRC was created to receive and investigate complaints of employment, housing and public accommodations discrimination. These include employment and public accommodations complaints based on race, religion, color, ancestry, sex, blindness, disability, national origin, and age, and housing complaints based on race, religion, color, ancestry, sex, blindness, disability, national origin, or familial status. The HRC also investigates complaints of retaliation for having complained about discrimination.

2. Where is the HRC located?

The offices of the West Virginia Human Rights Commission are located at 1321 Plaza East, Room 108A, Charleston, West Virginia 25301; Phone: (304) 558-2616; Toll-Free: (888) 676-5546; Facsimile: (304) 558- 0085; TTY: (304) 558-2976; Web address: [www.http://hrc.wv.gov](http://hrc.wv.gov)

3. Do I need an appointment?

If you are coming to the Human Rights Commission to talk with someone, it is helpful if you call ahead. However, the Commission staff will always attempt to assist anyone who calls or walks in to the HRC office at any time during business hours. If an in- person visit is difficult for you, much of the HRC process can be accomplished by telephone or mail.

The HRC office is open from 8:30 a.m. until 5:00 p.m., Monday through Friday, except for State holidays.

Information about the HRC, including forms for filing complaints, is available on-line (Web address: [www.http://hrc.wv.gov](http://hrc.wv.gov)).

4. Does the HRC have interpreters?

The HRC does not have language interpreters or sign language interpreters on staff; however, if you need an interpreter to communicate with a representative of the Human Rights Commission, the Commission will accommodate this need upon request. The HRC does have a TTY number for relay calls, (304) 558-2976.

5. Who may file a complaint with the HRC?

Any person who claims to be the victim of employment, housing, or public accommodations discrimination may file a complaint with the Commission. In addition, the Attorney General and the Human Rights Commission itself are authorized by the Human Rights Act to file complaints.

The Commission can investigate your complaint if, during the last 365 days, you have been paid less than your coworkers, denied a job or promotion, terminated, laid off, unfairly disciplined, harassed, or otherwise disadvantaged because of your race, color, national origin, ancestry, sex, age, blindness, and/or disability by an employer.

The Commission can also investigate if your employer has refused to provide you a reasonable accommodation for your disability or your religious beliefs, or if you have been retaliated against because you filed a complaint with the Commission, participated as a witness in a Commission proceeding, or sought to protect human rights by opposing unlawful discrimination in the workplace.

20. Are there any employers against whom the HRC cannot accept complaints?

The Human Rights Commission cannot accept complaints against any employer which is an agent of the Federal Government or any employer which does not employ 12 or more employees within the State of West Virginia.

21. Can I file a complaint even if I am still working for my employer?

Yes. You can file a complaint while you continue to work for your employer. You do not have to quit or be terminated before you complain of discrimination. If you are considering quitting your job because of discrimination, you should first talk with a lawyer about how quitting might affect your legal rights.

22. If I file a complaint, can my employer fire me?

It is unlawful for your employer to fire you, or do anything else threatening or harmful to you in retaliation for filing an HRC complaint. However, you can be terminated for legitimate reasons, despite the fact that you have a complaint filed at the HRC.

23. What kind of retaliation does the HRC investigate?

The HRC investigates claims that someone has attempted to punish you for exercising or protecting your human rights or has attempted to stop you from doing so. For example, if you complained to your employer about race or sex discrimination or harassment, and suffered consequences for making the complaint, this retaliation could be investigated by the HRC.

Please keep in mind that the HRC does not act as your lawyer during the investigation of your complaint. They do not act as your legal representative. HRC investigators are neutral evaluators during the investigation.

Once the investigation is complete, if the HRC finds probable cause and you do not have a lawyer, one of the Commission's attorneys will assist you in preparing your case for public hearing.

17. Do I have to file my complaint with the Commission if I want to take my complaint to court?

No. If your plan is to take your claim to state circuit court, you don't have to file with the HRC at all. If you decide you would rather go to circuit court after you file with the Commission, you can do so unless your case has already been to a hearing before a Commission administrative law judge. On the other hand, if you have filed your case in circuit court, you cannot change your mind and file with the HRC. If you are considering circuit court, you should consult with an attorney about your legal rights and the applicable filing deadlines.

18. What can I achieve through filing a complaint with the HRC?

If you file a complaint with the HRC, the entity you file against will have to answer your complaint and you will be able to see their explanation of events -- that is, it compels the Respondent to give its side of the story.

If a hearing is held by the HRC, and discrimination is proven, the HRC will issue an order designed to end the discrimination and address the harms it has caused. Orders vary depending on the circumstances. Some things which HRC orders can include are: reinstatement to a job, changes in policy, training for the Respondent's supervisors, lost wages, and/or incidental damages for humiliation. The HRC is not allowed to award monetary damages for pain and suffering. Except in housing cases, the HRC is not authorized to impose fines.

Employment

19. What kinds of employment discrimination can the HRC investigate?

The Commission can investigate any workplace discrimination that has happened in the last 365 days if the discrimination was motivated, at least in part, by race, color, national origin, ancestry, sex, age, blindness, or disability. In addition, the Commission investigates claims of retaliation against employees who have acted to protect their human rights, or the human rights of others.

6. How long do I have to file a complaint?

Discrimination complaints may be filed with the Human Rights Commission any time within 365 days of the act of alleged discrimination. However, the completion of a formal complaint can sometimes take days or weeks from the time you contact the HRC, so it is very important to start the process well in advance of the deadline.

The time limits for filing your case in state or federal court, if you should choose to take your complaint there instead of the HRC (see below), are different.

7. How do I file a complaint?

The first step in the process is to fill out an intake questionnaire called a Background Information Form. This form seeks information about you, information on the person or entity you are accusing of discrimination (the Respondent), and a description of the discrimination. The form (which differs slightly depending on whether you are claiming discrimination in employment, public accommodations, or housing) can be downloaded from the HRC Web page ([www.http://hrc.wv.gov](http://www.hrc.wv.gov)), requested by calling ((304) 558-2616; (888) 676-5546), or can be picked up at the HRC office.

The HRC process begins when the Commission receives a completed questionnaire, or Background Form, from you. An HRC staff member will use the information you provide to draft a formal complaint, which will be returned to you to review and to edit or revise as necessary. Eventually the formal complaint must be signed by you to attest to its accuracy.

The formal complaint is sent to the Respondent (the person or the entity you accuse of discrimination), who then has an opportunity to respond to your complaint.

8. What information does the HRC need from me to draft a complaint?

You will need to provide to the HRC: (a) your name and address, (b) the name and address of the person, organization, or business against whom you are filing your complaint, (c) a concise statement setting forth the facts which you claim constitute the discrimination, and (d) the date, dates, or period of time on which or during which the discrimination occurred.

You can provide this information by completing a Background Information Form, which can be obtained at the HRC offices or on-line.

In addition, the staff of the HRC may ask you for additional information in order to clearly understand the nature of the complaint that you are seeking to file. Please send in your Background Information Form in time to accommodate the complaint drafting process.

9. What happens after I file a complaint with the HRC?

The first thing that happens is that the complaint is sent to the Respondent, who is given an opportunity to share its side of the situation with the HRC. The HRC then begins its investigation, to explore the facts related to your complaint, and to consider whether there has been a violation of the Human Rights Act or the Fair Housing Act. The investigation may involve requests for information sent to you or to the Respondent, and it may involve interviews of you, of the Respondent, and/or of others.

It is likely that you will be one of the most important sources of information for the investigator. It is very important that you cooperate with the investigator in completing the investigation.

Once the investigation is complete, the HRC will make a determination of whether or not there is probable cause to believe that there has been a violation of the Human Rights Act or the Fair Housing Act.

10. If I have additional information for my case, what do I do?

Contact the investigator assigned to your case, and let that person know. If the investigator is not available when you call, leave clear information about how and when the investigator can contact you.

11. How can I find out what is going on with my case?

Contact the investigator assigned to your case with any questions you may have. However, be aware that there are some aspects of the investigation the investigator may not be able to discuss with you.

12. How long will it take to investigate my complaint?

The length of investigations depends on the complexity of the issues in the case, and the level of cooperation by the Complainant and the Respondent. The regulations governing employment and public accommodations complaints provide that investigations are to be completed within 150 days. The regulations provide that investigations of housing complaints are to be completed within 100 days, unless it is impractical to do so. Some investigations are more complex, however, and may take longer to complete.

13. What is conciliation?

Conciliation is a voluntary process for resolving a case, through the agreement of the parties rather than through a decision by the HRC. It is a chance to see if you can work things out by agreement. While the HRC is investigating your case, you and the Respondent will be invited to participate in the conciliation process. If both sides are willing to conciliate, the HRC will set up a conciliation meeting. If the parties are able to come to an agreement which is acceptable to both sides, that agreement is reduced to writing, and the case is dismissed.

14. What if the HRC finds probable cause?

If the HRC determines that there is probable cause to believe that you were the victim of unlawful discrimination, an administrative law judge will be assigned to hold a hearing on your complaint. You are entitled to hire a lawyer to represent you at this hearing if you want, but this is not necessary. If you don't have your own lawyer, one of the Commission's lawyers will be available to present the case on your behalf.

15. What if the HRC finds no probable cause?

If the HRC determines that there is no probable cause to believe that you were the victim of discrimination, the HRC will provide you notice of this, and give you the opportunity to request a review of the determination, if you should choose to do so. If you request a review, in writing, within 10 days, the Commission may conduct a review and reconsider its determination.

If the HRC chooses not to grant your review, or if after reviewing the case it still believes there is no probable cause, your Human Rights Commission complaint will be dismissed.

If the HRC dismisses your complaint, there are some other options you can pursue. When your case is dismissed, the HRC will send you a "Right to Sue" notice, which will give you 90 days to file your complaint in a state circuit court. In general, the filing of a discrimination complaint in circuit court (in contrast with filing one before the HRC) is best accomplished with the assistance of a lawyer.

16. Do I need to hire a lawyer?

No. While you have the right to be represented by an attorney if you choose, you are not required to have a lawyer to file a complaint at the HRC. The HRC procedures are designed for people who are not represented by lawyers, and the HRC does not assume that you have a lawyer.